



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 31 2008

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

The Honorable John S. Bresland
Chairman and CEO
U.S. Chemical Safety and Hazard Investigation Board
2175 K Street, NW, Suite 650
Washington, DC 20037-1809

Dear Mr. Bresland:

This letter responds to a recommendation from the U.S. Chemical Safety and Hazard Investigation Board (CSB) regarding the 2006 fire at Environmental Quality Company's hazardous waste storage facility in Apex, North Carolina. CSB's case study of this fire specifically recommended that EPA:

"Ensure that the emergency response planning required for permitted hazardous waste treatment, storage, and disposal facilities (40 CFR 264.37) includes providing written information to state and local emergency response officials on the type, approximate quantities, and locations of materials within the facility (similar to reporting requirements of the Emergency Planning and Community Right-to-Know Act). Additionally, ensure that permit holders periodically update this information throughout the ten-year permit period." (2007-01-I-NC-R1, page 12)

As stated in the case study, hazardous wastes regulated under the Resource Conservation and Recovery Act (RCRA) are exempt from the hazardous chemical inventory reporting requirements of sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Further, while hazardous waste treatment, storage, and disposal (TSD) facilities must attempt to make arrangements with local authorities as appropriate for the types of the wastes handled, in many cases there is no requirement that any shared information be updated over the term of the permit. In such situations, local emergency planners and responders may not have complete and accurate chemical hazard information for TSD facilities. It should be noted that hazardous chemicals – as opposed to hazardous wastes – stored at TSD facilities may still be subject to EPCRA sections 311 and 312. EPA agrees that the recommendation has implications for both EPCRA and RCRA. Therefore, our response involves actions related to both statutes.

EPCRA

While EPCRA does not give EPA the authority to require TSD facilities to provide chemical inventory information for RCRA-regulated hazardous wastes to state and local officials, State Governors and State Emergency Response Commissions (SERCs) do have such authority under sections 302 and 303 of EPCRA.

Under section 302, a facility owner or operator is required to provide emergency planning notification to the SERC and the local emergency planning committee (LEPC) if the facility has any extremely hazardous substance (EHS) present above the threshold planning quantity (TPQ) for that substance. TPQs are listed in 40 CFR part 355, Appendix A and B. Even if there are no EHSs present at a facility, section 302(b)(2) of EPCRA authorizes the Governor or the SERC to designate additional facilities which shall be subject to the emergency planning requirements, if such designation is made after public notice and opportunity for comment. Once these facilities have been so designated, under section 303, the LEPC may request the facility owner or operator to provide information necessary for developing and implementing the community emergency plan. Although the RCRA-regulated hazardous wastes at such designated facilities would still be exempt from the specific chemical inventory reporting requirements of sections 311 and 312, the LEPC could use its authority under section 303 to obtain substantially equivalent information if the LEPC decided that, for example, annually updated chemical inventory information was necessary for development and maintenance of its community emergency plan.

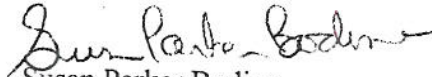
EPA will encourage Governors, SERCs, and LEPCs to exercise their authorities, as appropriate, to designate TSD facilities as subject to the requirements of Subtitle A of EPCRA, and to consider requiring them to annually provide chemical inventory information to SERCs, LEPCs, and local fire departments.

RCRA

The RCRA regulations in section 264.37 require the owner/operator to make arrangements with local authorities for the purposes of familiarizing them with the types of waste managed at a facility and the need for services from emergency responders. While these requirements do not specifically require that written information, describing locations and quantities of wastes stored at a facility, be provided to local authorities, EPA agrees with CSB's recommendation that such information should be provided, and that the written information should be periodically updated. We intend to work with EPA regions and states to develop guidance on how they might accomplish this result under existing regulations. We also will explore whether a regulatory change is needed. In the meantime, we have already widely circulated the CSB report to EPA regional and state permitting authorities and have emphasized the importance of addressing this issue at TSDs using current authorities.

If you have any questions or need further information, please contact me or have your staff contact James Belke at (202) 564-8023, or Jeff Gaines at (703) 308-8655.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Parker Bodine".

Susan Parker Bodine
Assistant Administrator